

Message Text

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TO AMEMBASSY BUCHAREST IMMEDIATE

C O N F I D E N T I A L STATE 150131

E.O. 11652: GDS

TAGS: CPRS, EFIN, RO

SUBJECT: DECREE 223 PROPERTY CASES: DRAFT DIPLOMATIC NOTE

1. THE DEPARTMENT PLANS TO DELIVER THE FOLLOWING DIPLOMATIC NOTE TO THE ROMANIAN EMBASSY IN THE NEXT FEW DAYS AND TO HAVE THE EMBASSY PRESENT A COPY TO THE GOR IN BUCHAREST. HOWEVER, WE WOULD FIRST APPRECIATE RECEIVING, BY IMMEDIATE RESPONSE, ANY COMMENTS WHICH THE EMBASSY MAY HAVE ON THE PROPOSED TEXT.

2. BEGIN TEXT - "THE DEPARTMENT OF STATE HAS THE HONOR TO DRAW TO THE ATTENTION OF THE EMBASSY OF THE SOCIALIST REPUBLIC OF ROMANIA THE CONCERN OF THE GOVERNMENT OF THE UNITED STATES OVER THE EFFECT OF ROMANIAN DECREE 223/1974 ON THE PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION FOR
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THE EXPROPRIATION OF PROPERTY OF UNITED STATES NATIONALS UNDER INTERNATIONAL LAW AND SECTION 502(B)(4) OF TITLE V OF THE TRADE ACT OF 1974.

3. AS THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA IS WELL AWARE, THIS MATTER HAS BEEN THE OBJECT OF NUMEROUS DISCUSSIONS BETWEEN REPRESENTATIVES OF BOTH GOVERNMENTS

SINCE 1973.

4. IN THEIR JOINT STATEMENT ON ECONOMIC, INDUSTRIAL AND TECHNOLOGICAL COOPERATION OF DECEMBER 5, 1973, THE UNITED STATES OF AMERICA AND THE SOCIALIST REPUBLIC OF ROMANIA AGREED THAT "... EXCEPT FOR A PUBLIC PURPOSE, ASSETS BELONGING TO NATIONALS, COMPANIES AND ECONOMIC ORGANIZATIONS OF ONE OF THE TWO COUNTRIES WILL NOT BE EXPROPRIATED BY THE OTHER COUNTRY, NOR WILL THEY BE EXPROPRIATED WITHOUT THE PAYMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION". THIS COMMITMENT WAS REITERATED, VERBATIM, IN THE LONG-TERM AGREEMENT ON ECONOMIC, INDUSTRIAL AND TECHNICAL COOPERATION SIGNED NOVEMBER 21, 1976.

5. IN ITS AIDE-MEMOIRE OF AUGUST 26, 1975, CONCERNING DECREE 223/1974, THE AMERICAN EMBASSY IN BUCHAREST EXPLAINED, INTER ALIA, THE REQUIREMENT IN SECTION 502 OF THE TRADE ACT OF 1974 RELATING TO EXPROPRIATION OR SEIZURE OF PROPERTY OWNED BY AMERICAN CITIZENS AND THE CONDITIONS FOR ACCORDING DEVELOPING COUNTRIES THE BENEFITS OF THE UNITED STATES SYSTEM OF GENERALIZED PREFERENCES (GSP). IT FURTHER EXPRESSED CONCERN OVER THE FACT THAT THE ABSOLUTE LIMITS ON THE AMOUNTS OF COMPENSATION FOR REAL PROPERTY IN URBAN AND RURAL AREAS EXPROPRIATED PURSUANT TO DECREE 223/1974 DO NOT MEET, IN SOME CASES, THE REQUIREMENT OF PROMPT, ADEQUATE AND EFFECTIVE COMPENSATION IN INTERNATIONAL LAW, AND AS CONFIDENTIAL

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PRESCRIBED BY SECTION 502(B)(4) OF TITLE V OF THE TRADE ACT OF 1974. SECTION 502(B)(4) READS IN PERTINENT PART AS FOLLOWS:

-- IN ADDITION, THE PRESIDENT SHALL NOT DESIGNATE
-- ANY COUNTRY A BENEFICIARY DEVELOPING COUNTRY
-- UNDER THIS SECTION ... IF SUCH COUNTRY (A)
-- HAS NATIONALIZED, EXPROPRIATED, OR OTHERWISE
-- SEIZED OWNERSHIP OR CONTROL OF PROPERTY OWNED BY
-- A UNITED STATES CITIZEN OR BY A CORPORATION,
-- PARTNERSHIP, OR ASSOCIATION WHICH IS 50 PER-
-- CENT OR MORE BENEFICIALLY OWNED BY UNITED
-- STATES CITIZENS, THE EFFECT OF WHICH IS TO
-- NATIONALIZE, EXPROPRIATE, OR OTHERWISE SEIZE
-- OWNERSHIP OR CONTROL OF PROPERTY SO OWNED ...
-- UNLESS
-- (D) THE PRESIDENT DETERMINES THAT
-- (I) PROMPT, ADEQUATE AND EFFECTIVE
-- COMPENSATION HAS BEEN OR IS BEING
-- MADE TO SUCH CITIZEN, CORPORATION,
-- PARTNERSHIP OR ASSOCIATION,
-- (II) GOOD FAITH NEGOTIATIONS TO

-- PROVIDE PROMPT, ADEQUATE, AND EFFECTIVE
-- COMPENSATION UNDER THE APPLICABLE
-- PROVISIONS OF INTERNATIONAL LAW

-- ARE IN PROGRESS, OR SUCH COUNTRY IS
-- OTHERWISE TAKING STEPS TO DISCHARGE
-- ITS OBLIGATIONS UNDER INTERNATIONAL
-- LAW WITH RESPECT TO SUCH CITIZEN,
-- CORPORATION, PARTNERSHIP, OR ASSO-
-- CIATION, OR
-- (III) A DISPUTE INVOLVING SUCH CITIZEN,
-- CORPORATION, PARTNERSHIP, OR ASSOCIATION
-- OVER COMPENSATION FOR SUCH A SEIZURE
-- HAS BEEN SUBMITTED TO ARBITRATION
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-- UNDER THE PROVISIONS OF THE CONVEN-
-- TION FOR SETTLEMENT OF INVESTMENT
-- DISPUTES, OR IN ANOTHER MUTUALLY
-- AGREED UPON FORUM,
-- AND PROMPTLY FURNISHES A COPY OF SUCH
-- DETERMINATIONS TO THE SENATE AND HOUSE
-- OF REPRESENTATIVES.

6. AT A MEETING ON OCTOBER 25, 1977, IN BUCHAREST, THE
DEPUTY PRIME MINISTER INFORMED THE AMERICAN AMBASSADOR
THAT AFTER EXTENSIVE DISCUSSIONS AND A MEETING WITH THE
PRESIDENT OF THE SOCIALIST REPUBLIC OF ROMANIA, A SOLUTION
TO THE PROBLEM HAD BEEN FOUND, DESPITE THE FACT THAT DECREE
223/1974 ITSELF COULD NOT BE CHANGED. HE STATED THAT WITH-
IN THE CONSTRAINT THAT NO PUBLICITY BE GIVEN TO THE SOLU-
TION, THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA
HAD DECIDED TO PROCESS INDIVIDUAL CLAIMS ON A CASE-BY-CASE
BASIS. ALL THAT WOULD BE REQUIRED WAS TO PRESENT EACH
CASE FOR SETTLEMENT. THE DEPUTY PRIME MINISTER REPEATED
THESE SAME ASSURANCES TO THE DEPUTY SECRETARY OF STATE IN
WASHINGTON ON NOVEMBER 1, 1977.

7. THE GOVERNMENT OF THE UNITED STATES REITERATES ITS
VIEW, PREVIOUSLY STATED ON NUMEROUS OCCASIONS, THAT THE
LIMITATIONS IMPOSED BY DECREE 223/1974 TO THE MAXIMUM OF
40,000 LEI FOR EACH HOUSING FACILITY (APARTMENT) IN URBAN
AREAS AND 20,000 LEI IN RURAL AREAS WOULD NOT MEET THE
REQUIREMENT FOR THE PAYMENT OF PROMPT, ADEQUATE AND EFFECT-
IVE COMPENSATION FOR THE EXPROPRIATION OF PROPERTY OF
UNITED STATES NATIONALS WHERE THE VALUE OF SUCH PROPERTY
EXCEEDED THE MAXIMUM AMOUNTS BOTH UNDER INTERNATIONAL LAW
AND SECTION 502(B)(4) OF TITLE V OF THE TRADE ACT OF 1974.

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8. THE GOVERNMENT OF THE UNITED STATES REGRETS TO NOTE THAT, NOTWITHSTANDING PROLONGED DISCUSSIONS AND REPEATED ASSURANCES ON THE PART OF REPRESENTATIVES OF THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA, CLAIMS OF UNITED STATES NATIONALS FOR THE TAKING OF THEIR PROPERTY UNDER DECREE 223/1974 REMAIN UNRESOLVED. IF PROMPT ACTION IS NOT

TAKEN BY THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF ROMANIA TO SETTLE CLAIMS OF UNITED STATES NATIONALS UNDER DECREE 223/1974 IN A MANNER CONSISTENT WITH THE ABOVE-NOTED REQUIREMENTS OF INTERNATIONAL LAW AND THE TRADE ACT, THE GOVERNMENT OF THE UNITED STATES WILL HAVE TO RECONSIDER THE CONTINUED ELIGIBILITY OF THE SOCIALIST REPUBLIC OF ROMANIA FOR THE BENEFITS OF THE GENERALIZED SYSTEM OF PREFERENCES." END TEXT. CHRISTOPHER

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NNN

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